IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12048 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUNUILKUMAR R GUPTA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12048 of 2002

MR KR JANI for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 18/02/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has

challenged his detention order dated 16.10.2002. By the impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM" for short).

#. Along with the detention order, the detenu was also served with the grounds of detention. In the said grounds, it is mentioned that one tanker was found near the gate of one Ganga Rasayan on 1.7.2002 in which certain quantity of Free Sale Kerosene was found. After the inquiry, it was found that the said quantity was illegally sold by the petitioner by charging high price. In the grounds of detention, the authority has mentioned about the role of the petitioner in illegally transporting the goods in question. The authority, thereafter, having been satisfied about the role of the petitioner, has detained the petitioner under the provisions of the PBM by way of preventive detention. The said order is challenged by the petitioner on various grounds.

#. At the time of hearing of this petition, it is argued by Mr.Jani, learned advocate, for the petitioner that the incident in question has taken place on 1.7.2002 and on 12.7.2002 the role of the petitioner came to the notice and it is clearly mentioned in the detention order in para 1 that on 12.7.2002 one Prakashbhai Surendrabhai Vyas has produced the invoice-cum-cash memo dated 26.4.2002, from which it is clear that the kerosene, which is found in the aforesaid tanker, was purchased from the petitioner. It is required to be noted that the incident in question has taken place on 1.7.2002 and at least on 12.7.2002, it came to the notice of the authority that the kerosene was purchased from the petitioner's shop. In the meanwhile, the kerosene was also sent to the FSL. The FSL report came on 29.8.2002 and as per the said report, it was found that the kerosene is not adulterated one. It is argued that even though the incident in question is dated 1.7.2002 and even though the authority knew about the so called role of the petitioner on 12.7.2002, there is a delay in passing the detention order, as, the detention order is passed on 16.10.2002. In the affidavit-in-reply, the said delay has been tried to be explained. However, there is absolutely no explanation about the delay between 12.7.2002, i.e. the date on which at least the role of the petitioner was brought to the notice of the sponsoring authority, and recording of the statement of

some witness dated 11.9.2002. This period is absolutely not explained even in the reply by the authority. For that purpose, learned advocate has relied upon the decision of this Court in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and others, reported in 1997 (1) GLH 381 wherein the Court in para 21 observed as under.:

> "In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Praksh v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993 (2) Suppli, SCC 61."

#. However, it is required to be noted that, if really the activities of the petitioner-detenu are required to be prevented, there is no reason to wait for such a long time, i.e. upto 16.10.2002. In that view of the matter and in view of the judgment referred to above, the order of detention is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 16.10.2002 is quashed and set aside. The detenu Shri Sunilkumar R.Gupta is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)

(pathan)